

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA**

Bankruptcy Case No.: 6:11-bk-05364-ABB

In the Matter of:

FREDERICK COOPER, and
KAREN COOPER,

Debtors.

Adversary Proceeding No.: 6:11-ap-00139-BGC

MICHAEL EASLICK, and HUDA EASLICK,
individually, and derivatively on behalf of
407 CUSTOM SUPER STORE, INC.

Plaintiffs,

v.

FREDERICK COOPER,
and KAREN COOPER,

Defendants.

**PLAINTIFFS' MOTION FOR AN ORDER TO PREVENT
WITNESS, FOCUS 9 FROM PAYING COURT ORDERED
SANCTIONS IN PENNIES, OR OTHER LOOSE CHANGE**

Plaintiffs, MICHAEL and HUDA EASLICK, move for an Order to prevent, non-party, Focus 9 from paying the court ordered sanctions in pennies, or other loose change¹.

¹ This is based on Focus 9's initial payment in pennies, as shown in the attached exhibits, delivered to counsel as payment under the payment plan to satisfy the obligation under the Court's Order of January 24, 2013, (Doc. 68).

1. Pursuant to the January 24, 2013, Order awarding sanctions, Plaintiff, through counsel, and counsel for Focus 9 agreed to a payment plan for the sanctions awarded by the Court.

2. On February 22, 2013, Focus 9 made the initial payment toward the Court-ordered sanctions in \$300.00 worth of pennies. (See Exhibit A attached).

3. Focus 9's payment in pennies, or some other combination of loose coins for the clear and unequivocal punitive purpose of creating inconvenience to Plaintiffs and their counsel, and cause them to incur additional legal fees and costs related to accepting payments in this manner.

4. One of the implied contract terms recognized in Florida law is the implied covenant of good faith, fair dealing, and commercial reasonableness. *See Scheck v. Burger King Corp.*, 798 F.Supp. 692, 700 (S.D. Fla. 1992). It is not commercially reasonable to pay \$3,469.22, ordered by the court, in pennies or loose coins, nor is it fair dealing, or by any stretch of the imagination, a payment made in good faith.

5. The chosen payment method by Focus 9 is obnoxious, and an attempt to cause a hardship on Plaintiffs and their counsel, in fulfilling the obligation imposed by this Court. Focus 9 again disrespects the Court and legal system.

6. Other courts that have confronted such efforts before, and have agreed that large amounts of coins can be rejected as payment. *See, e.g. State of Ohio v. Carroll*, Civ. Act. No. 96-2236, 19 WL 118064 (Ohio App. 4 Dist., March 13, 1997), upholding refusal to accept 12,300 loose pennies to pay court fine "even if legal tender" holding the time required to sort, roll, and count them was burdensome and unreasonable. *Powell v.*

Powell, 17 S.W. 3d 156 (Tex. 2005), affirmed as an exercise of the court's inherent powers an order awarding attorney's fees and a variety of costs against the defendant for his "frivolous and ridiculous" actions when payment \$1,000.00 attorney's fee award in loose pennies, thereby intentionally causing a hardship and increased costs.

7. This Court has the inherent power to deter and punish frivolous and improper activity by imposing sanctions against a litigant, or a witness under the Court's inherent powers. *Clinton v. Jones*, 520 U.S. 681, 709, 117 S.Ct. 1636, 1652 (1997) citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50, 111 S.Ct. 2123, 2136 (1991); and *Bryne v. Nezhat*, 261 F.3d 1075, 1105 – 1106 (11th Cir. 2001).

8. This Court also has the inherent power to impose sanctions for conduct that threatens the integrity of the judicial process. *Belak v. American Eagle, Inc.*, 2001 WL 253608, *5-6 (S.D. Fla. 2001) citing to *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991), *supra*. A court must fashion a sanction that not only punishes the wrongdoer, but also deters future misconduct. *Id.* The Court's arsenal of sanctions includes the assessment of attorney's fees. *Id.*

9. With regard to the sanction of attorney's fees, the Supreme Court has noted:

If a court finds 'that fraud has been practiced upon it, or that the very temple of justice has been defiled,' it may assess attorney's fees against the responsible party, as it may when a party 'shows bad faith by delaying or disrupting the litigation or by hampering enforcement of a court order.' The imposition of sanctions in the instance transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the dual purpose of 'vindicat[ing] judicial authority without resort to the more drastic sanctions

available for contempt of court and mak[ing] the prevailing party whole for expenses caused by his opponent's obstinacy.'

Id. citing Chambers, 501 U.A. at 46 (citations omitted).

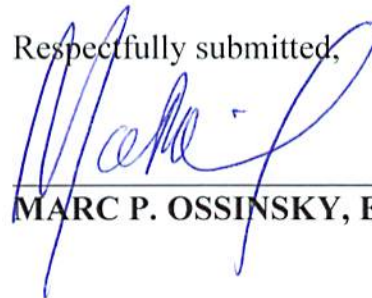
10. Plaintiffs respectfully submit that sanctions are warranted against Focus 9, their attorneys, or both for their blatant disrespect of the Court's authority here.

11. The undersigned has incurred 2.0 evaluating the situation, and preparation of this Motion. Plaintiffs' usual hourly rate is \$300.00.

12. Rule 3.01(g) certification: The undersigned contacted Focus 9's counsel, Christie Mitchell, Esquire, by phone before filing this Motion. Ms. Mitchell informed she would talk to her client, and get back with the undersigned, but to date she has not called back on this issue.

WHEREFORE, Plaintiffs move this Court to enter an Order that witness, Focus 9, are prevented from paying any sanctions award with pennies, or other loose change, and order that Focus 9's remaining balance be paid in certified funds (wither by wire or cashier's check), and Order them to pay as sanctions attorney's fees and costs incurred, as a result of Focus 9's conduct.

Respectfully submitted,



MARC P. OSSINSKY, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been electronically filed with the Clerk of Court by using the ECF system on this 26th day of March, 2013, which will send a notice of electronic filing to the following:

RAYMOND J. ROTELLA, ESQUIRE

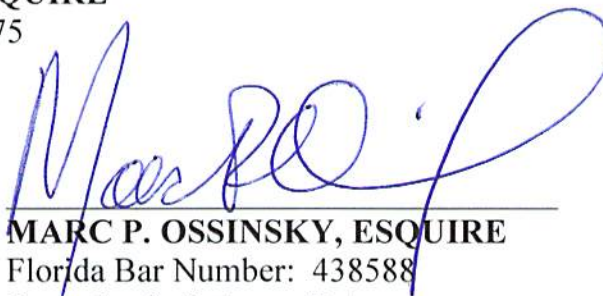
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